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Paul N. Kokulis  
Morgan, Lewis & Bockius  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

In re Application of	:	
FRENKEN et al.	:	
Serial No.: 09/807,172	:	DECISION ON PETITION
PCT No.: PCT/EP99/08323	:	UNDER 37 CFR 1.181
Int. Filing Date: 22 October 1999	:	
Priority Date: 27 October 1998	:	
Atty. Docket No.: P279470	:	
For: ANTIGEN-BINDING PROTEINS	:	

This is a decision on applicant's "Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181" filed 03 July 2002.

### BACKGROUND

On 22 October 1999, applicant filed international application no. PCT/EP99/08323 which claimed a priority date of PCT/EP99/08323. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 04 May 2000. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States at midnight on 27 April 2001.

On 10 April 2001, applicant filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and 14 pages of sequence listing.

On 07 May 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) and a NOTIFICATION TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES (Form PCT/DO/EO/920) indicating declaration in compliance with 37 CFR 1.497(a) and (b) was required. Furthermore, the Notification stated that the sequence listing was not in compliance with 37 CFR 1.821-1.825 in that a copy of the "sequence listing" in computer readable form has not been submitted as required by 37 CFR 1.821(e).

On 29 May 2001, applicant filed a declaration and power of attorney.

On 30 May 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 07 May 2001 within the time period set therein. The Notification indicated the sequence listing and sequence listing in computer readable form had not been submitted.

On 03 July 2001, applicant filed the present petition to withdraw holding of abandonment.

### DISCUSSION

The above-identified application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 07 May 2001, in that, the sequence listing and sequence listing in computer readable form had not been submitted within the period set therein. Applicant states in their present petition, "that a paper copy of the sequence listing was forwarded at the onset of the application as evidenced by the attached copy of the stamped postcard dated April 10, 2001 . . . the requisite (computer readable form) CRF is submitted concurrently herewith." Applicant's assertion that the paper copy of the sequence listing filed 10 April 2001 satisfies the requirements of 37 CFR 1.821-1.825 and the Notification of Missing Requirements mailed 07 May 2001 is misguided.

37 CFR 1.821(e) states:

A copy of the "Sequence Listing" referred to in paragraph (c) of this section must also be submitted in computer readable form in accordance with the requirements of § 1.824. The computer readable form is a copy of the "Sequence Listing" and will not necessarily be retained as a part of the patent application file. If the computer readable form of a new application is to be identical with the computer readable form of another application of the applicant on file in the Patent and Trademark Office, reference may be made to the other application and computer readable form in lieu of filing a duplicate computer readable form in the new application if the computer readable form in the other application was compliant with all of the requirements of these rules. The new application shall be accompanied by a letter making such reference to the other application and computer readable form, both of which shall be completely identified. In the new application, applicant must also request the use of the compliant computer readable "Sequence Listing" that is already on file for the other application and must state that the paper copy of the "Sequence Listing" in the new application is identical to the computer readable copy filed for the other application.

As stated above, the filing the paper copy of the "Sequence Listing" does not satisfy the requirements of 37 CFR 1.825(e) and the application was abandoned for failure to respond to

the Notification of Missing Requirements dated 07 May 2001. However, upon receipt of the declaration dated 29 May 2001, in response to the Notification of Missing Requirements, the Patent and Trademark Office should have mailed a Notification of Defective Response indicating that the sequence listing and sequence listing in computer readable form were still required. Since the Patent and Trademark Office erred in not mailing this form to applicant, the Notification of Abandonment was mailed in error and is hereby withdraw. Therefore, applicant petition to withdraw holding of abandonment is granted.

### CONCLUSION

Therefore, the petition to withdraw holding of abandonment is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO) for processing in accordance with this decision, that is, reviewing of the sequence listing and sequence listing in computer readable form and, if appropriate, preparation and mailing of the Notification of Acceptance of Application under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating a date of **03 July 2002** under 35 U.S.C. 371(c).



Richard Cole  
PCT Legal Examiner  
PCT Legal Office



Anthony Smith  
Attorney-Advisor  
PCT Legal Office  
Telephone: (703) 308-6314  
Facsimile: (703) 308-6459